

Late Backup

#28
6-28-12
Exhibit C

[variation 9-2-05 - Modified]

**SECTION 108 CUSTODIAL AGREEMENT CONCERNING
GUARANTEED LOAN FUNDS ACCOUNT
AND
FOR MORTGAGES AND OTHER COLLATERAL HELD AS SECURITY**
[Family Business Loan Program]

THIS SECTION 108 CUSTODIAL AGREEMENT CONCERNING GUARANTEED LOAN FUNDS ACCOUNT AND FOR MORTGAGES AND OTHER COLLATERAL HELD AS SECURITY dated effective ____ July 2012 (the "**Custodial Agreement**") by and between the **CITY OF AUSTIN, TEXAS**, a Texas home rule city and corporation under Chapter 9, Texas Local Government Code, and having an office for the conduct of business at 301 West Willie Nelson Boulevard, Austin, Texas 78701 (the "**City**"), and Regions Bank, a Alabama banking corporation organized and existing under the laws of Alabama, and having an office for the conduct of business at 1717 St. James Place – Fifth Floor, Houston, Texas 77056 (the "**Custodian**"),

WITNESSETH:

WHEREAS, the City has entered into a Contract for Loan Guarantee Assistance (the "**Section 108 Contract**") of even date with this Custodial Agreement with the Secretary of the U.S. Department of Housing and Urban Development (the "**Secretary**") under Section 108 of Title I of the Housing and Community Development Act of 1974, as amended (the "**Act**"); and

WHEREAS, the Custodian is a financial institution regulated by the Federal Deposit Insurance Corporation, the Federal Reserve System, the Federal savings and Loan Insurance Corporation, or the U.S. Comptroller of the Currency; and

WHEREAS, the parties to this Custodial Agreement desire to set forth the terms and conditions for the deposit and custodianship of the documents evidencing and relating to the note to be guaranteed by the Secretary pursuant to Section 108 of Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5308 in the principal amount of **\$3,000,000, No. B-05-MC-48-0500 [City of Austin Family Business Loan Program]** (the "**Section 108 Note**"); and

WHEREAS, the parties to this Custodial Agreement desire to set forth the terms and conditions for the deposit and custodianship of the documents evidencing and relating to the collateral to be given as security (the "**Security Deposit**") pursuant to the Section 108 Contract to finance the re-lending of the proceeds of the Section 108 Note by the City to various commercial businesses in designated areas of the City under the City's Family Business Loan Program (the "**FBL Program**") which will be secured by mortgages, in either first or second lien position, (the "**Business Mortgage**," collectively the "**Business Mortgages**") on the property (the "**Business Loan Property**," collectively the "**Business Loan Properties**") or security

agreements (the "**Business Security Agreement**," collectively the "**Business Security Agreements**") with respect to personal property acquired with loan proceeds (the "**Business Loan**," collectively the "**Business Loans**"); and

WHEREAS, the City shall secure Business Mortgages and Business Security Agreements with respect to the Business Loans and pledge such to the Secretary as security for the Section 108 Note guaranteed by the Secretary. In addition, in the event a Business Loan becomes non-performing under the Contract, the City may substitute and pledge existing business loans financed under the FBL Program as additional security for the Section 108 Note (the "**Replacement Loan**"); and

WHEREAS, the parties have additionally entered into four letter agreements concerning four separate accounts described in the Section 108 Contract, including the Letter Agreement for Section 108 Loan Guarantee Program Deposit Account – Guaranteed Loan Funds Account concerning account GP # _____, the Letter Agreement for Section 108 Loan Guarantee Program Deposit Account – Loan Repayment Account concerning account GP # _____, the Letter Agreement for Section 108 Loan Guarantee Program Investment Account – Guaranteed Loan Funds Investment Account concerning account GP # _____, and the Letter Agreement for Section 108 Loan Guarantee Program Investment Account – Loan Repayment Investment Account concerning account GP # _____, all dated even date with this Custodial Agreement (collectively, the proceeds available under the four letter agreements are referred to as the "**HUD Letter Agreement Proceeds**");

NOW THEREFORE, in consideration of the mutual undertakings expressed in this Custodial Agreement, the parties agree as follows:

1. The City shall deposit with the Custodian the documents set forth at **Exhibit "A"** attached hereto and incorporated herein by reference (collectively the "**Loan Documents**").

Receipt of the Loan Documents will be acknowledged by the Custodian by execution of the receipt in the form attached as **Exhibit "B"** attached hereto and incorporated herein by reference.

The Custodian shall segregate and maintain continuous custody and control of all Loan Documents deposited with it on behalf of the Secretary until the Section 108 Note is paid in full, and shall hold the Loan Documents in secure and fireproof facilities, in accordance with customary standards for such storage. The Custodian may rely on information received from the City pertaining to the payment of the Section 108 Note.

2. The Custodian, only upon presentation by the City of a Request for Release of Loan Documents, shall release to the City the appropriate Loan Documents in custody of the Custodian, and shall retain the request as a receipt from the City. The City shall make such request only when it is necessary for carrying out the City's responsibilities to service, collect prepayment, replace, or foreclose a loan secured by Loan Documents with the Custodian, as described in the Section 108 Contract.

3. At any reasonable time, the Custodian shall make available for examination and audit by representative of the City or the Secretary all Loan Documents in its custody.

4. (A) Upon representation to the Custodian by the Secretary that a default has occurred under the Section 108 Contract, the Custodian shall comply with any request the Secretary shall make for the delivery to the Secretary of all Loan Documents in the Custodian's custody.

(B) If, following such a default, the Secretary elects to assume or transfer the duties and obligations of the City and elects to continue the custodial relationship, the Custodian agrees to continue its obligations herein for the Secretary for a reasonable time on the same terms and conditions as set forth in this Custodial Agreement, provided that in no event shall the Secretary be obligated to pay compensation or fee for the holding or release of any Loan Documents during such reasonable period. If, however, the Secretary elects to terminate such agreement, Custodian shall comply with the provisions of this election by the Secretary.

5. Custodian shall invest and reinvest any HUD Letter Agreement Proceeds in the **Regions Cash Deposit Fund**, unless otherwise instructed in writing by City. Such written instructions, if any, referred to in the foregoing sentence shall specify the type and identity of the investments to be purchased and/or sold and shall also include the name of the broker-dealer, if any, which City directs the Custodian to use in respect of such investment, any particular settlement procedures required, if any (which settlement procedures shall be consistent with industry standards and practices), and such other information as Custodian may reasonably require. Receipt, investment and reinvestment of the HUD Letter Agreement Proceeds shall be confirmed by Custodian as soon as practicable by account statement and with respect to any discrepancies in any such account statement City shall make a good faith effort to inform Custodian about such discrepancy within 90 calendar days after receipt thereof.

6. Consideration for services to be performed by the Custodian under this agreement shall be the amounts as set forth in **Exhibit "C"** to this Custodial Agreement and by this reference incorporated in it and other good and valuable consideration the receipt and sufficiency of which is acknowledged.

[Remainder of Page Intentionally Left Blank - Signature Page Follows]

THIS AGREEMENT is hereby executed on behalf of the parties as follows:

CITY OF AUSTIN, TEXAS

By: _____

Name: Marc A. Ott

Title: City Manager

By: _____

Name: Letha Glover

Title: Vice President

EXHIBIT A

LOAN DOCUMENTS

City shall deposit with the Custodian the following documents:

- A. An original financing transcript with respect to the Attorney General approved \$3,000,000 Section 108 Note.
- B. With respect to each Business Loan or Replacement Loan in accordance with the Section 108 Contract, as applicable:
 - 1. The original Business Note.
 - 2. The original Business Loan Agreement, and an assignment of the document to the Secretary.
 - 3. A certified copy of the Business Mortgage, with the original Business Mortgage to follow, and an assignment of the document to the Secretary.
 - 4. An Assignment of Leases and Rents, and an assignment of the document to the Secretary.
 - 5. A certified copy of the Security Agreement, with the original Security Agreement to follow, and an assignment of the document to the Secretary.
 - 6. A certified copy of the Assignment of Interest in Loan or Debt Service Reserve Accounts, with the original Assignment of Interest or Debt Service Reserve Accounts to follow.
 - 7. An appraisal of the value of the property or the net liquidation value of machinery or equipment.
 - 8. A mortgagee title commitment, with the policy to follow, naming the Secretary as an additional insured party.
 - 9. A certified survey.
 - 10. An opinion of City's counsel.

CUSTODIAN'S RECEIPT

The undersigned hereby acknowledges receipt of the following documents delivered in accordance with that certain **SECTION 108 CUSTODIAL AGREEMENT CONCERNING GUARANTEED LOAN FUNDS ACCOUNT AND FOR MORTGAGES AND OTHER COLLATERAL HELD AS SECURITY** dated effective ____ June 2012 by and between the **CITY OF AUSTIN, TEXAS** and the undersigned with respect to **HUD 108 Loan No. B-05-MC-48-0500**:



Custody Services for
City of Austin
HUD 108 Variable/Fixed Rate Notes
Series 2012 Certificates

Schedule of Fees

Annual Custodial Fee:\$1000
Acceptance Fee (one time):..... \$500

Fees are payable at the closing of this transaction. Thereafter, fees and any expenses will be billed on the anniversary date of the closing.

The above-mentioned fees are basic charges and do not include out-of-pocket expenses, which will be billed in addition to the regular charges as required. Out-of-pocket expenses shall include, but are not limited to: telephone tolls, stationery, travel and postage expenses.

Charges for performing extraordinary or other services not contemplated at the time of the execution of the transaction or not specifically covered elsewhere in this schedule will be determined by appraisal in amounts commensurate with the service to be provided. Counsel fees, if ever retained as a result of default or other extraordinary occurrence on behalf of the bondholders or Regions will be billed at cost. Quote does not include legal fees for trustee counsel opinions.

Services not included in this Fee Schedule, but deemed necessary or desirable by you, may be subject to additional charges based on a mutually agreed upon fee schedule.